IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE CIVIL JURISDICTION

APPEAL NO. 574 OF 1997
IN
WRIT PETITION NO. 979 OF 1993

Hawabi Mansoor Ahmed Patwari
wd/o. Mansoor Ahmed Noormiya,
c/o. Maharashtra General Kamgar
Union 252, Janata Colony, Ram
Narayan Narkar Marg, Ghatkopar(East),
Bombay 400 097. Appellant
(original Respondent no.1)

vs.

1. Carona Limited
New Udyog Mandir, Mahim,
Bombay 400 016.

2. 7th Labour Court,
Arun Chambers, Tardeo,
Bombay 400 034. Respondents
(original petitioner and
original respondent no.2)

Mr. N.M. Ganguli with Ms.K.G. Poojari for the appellant.

Mr.Piyush Shah for respondent no.1.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 15th September 2004

ORAL JUDGMENT (Per R.M.Lodha,J.):

Mansoor Ahmed Noormiya (since deceased) was employed with M/s. Carona Sahu Company Ltd. (now Carona Limited). For the sake of convenience, we shall refer them as 'the workman' and 'the employer' respectively. The workman was chargesheeted of the

misconduct namely: (i) wilful insubordination and disobedience; (ii) wilful slowing down the performance of work and (iii) commission of act of subversive of discipline or good behaviour on the premises of the establishment. The Enquiry Officer was appointed to enquire into the aforesaid charges. Before the Enquiry Officer the proceedings were held on many dates. The workman was represented by the official of the union of the Maharashtra General Kamgar Union. The evidence was recorded by the Enquiry Officer and by his finding dated 27th December 1982, the Enquiry Officer held that all the charges levelled against the workman stood proved. The Enquiry Officer forwarded the enquiry report. The employer vide order dated 8th January 1983 accepted the findings of the Enquiry Officer and found that the charge of go-slow being very serious charge and the said charge having been proved, the petitioner was liable to be dismissed from service and, accordingly, by that order the petitioner's services came to be dismissed. The industrial dispute was raised concerning the dismissal of the workman and the conciliation proceedings having resulted in failure, the industrial dispute was referred to the concerned Labour Court for adjudication. Before the Labour Court, the principal issues were: (a) whether the enquiry held against the workman was legal, fair and proper and (b) whether the workman should be reinstated with continuity of service

and full back wages with effect from 10th January 1983. The Labour Court, after recording the evidence and hearing the parties, held by Part I Award that the enquiry held against the workman was legal, fair and proper. The Labour Court further held that though there was loss of work on three days, the dismissal of the workman from service was grossly disproportionate and quite harsh. The Labour Court, accordingly set aside the dismissal order dated 4th February 1993 and passed award for reinstatement of the workman with 75% back wages.

2. The employer filed the writ petition before this Court challenging the award of the Labour Court dated 4th February 1993. The learned Single Judge by his judgment dated 17th February 1997 set aside the award of the Labour Court. It is this order of the learned Single Judge which is under challenge in this appeal.

3. We may notice at this stage that the workman died during the pendency of the appeal and his legal representatives have been brought on record.

4. Mr.N.M. Ganguli, the learned counsel for the workman submitted that the workman was working in a team of five workmen and there was no evidence to prove that fall in the production was due to the workman.

According to Mr.Ganguli, four other workmen who belonged to the rival union were not proceeded with by the employer and the workman was victimised. Mr.Ganguli contended that the employer acted unjustly and out of victimisation in dismissing the workman from service. The learned counsel would also submit that the Labour Court exercised its jurisdiction under Section 11A of the Industrial Disputes Act, 1947 holding that the dismissal of the workman's services was disproportionate to the charges proved and there was no justification for the learned Single Judge to reverse the award passed by the Labour Court.

5. We are not persuaded by the submission of the learned counsel for the workman. The Labour Court reached the conclusion that the domestic enquiry held against the workman was fair and proper. There is no challenge to this aspect. In the enquiry held against the workman, the Enquiry Officer held that the workman was guilty of wilful go-slow and resultant loss in production, wilful insubordination and instigating co-workers to resort to go-slow. The Labour Court also found as a matter of fact that the charge of go-slow levelled against the workman was proved. However, despite having held so the Labour Court held that since the loss in production was only for three days, dismissal was grossly disproportionate. It goes without

saying that the charge of go-slow is a serious charge. That the workman adopted go-slow tactics is well established in the domestic enquiry. The loss in production is also proved in the enquiry. That the domestic enquiry was fair and proper is not in dispute. There is no merit in the contention of the learned counsel for the workman that the workman was working in a team of five workmen and that loss of production could be because of the four other workmen. Before the Enquiry Officer, two witnesses viz., Naik and Jagannath Bengera were examined who proved that the shortfall in the production was due to go-slow tactics of the workman. The evidence of these witnesses was believed by the Enquiry Officer. Once the charge of wilful go-slow and that he incited the co-workers to go-slow was established, in our view, the learned Single Judge cannot be said to have erred in holding that the charge of go-slow being serious, there was no justification for the Labour Court in interfering with the dismissal order. The learned Single Judge has extensively considered the entire evidence on record and thereafter held that the charge was conclusively proved and that the company cannot be said to have acted unjustly and out of victimisation. We find no reason to take a different view.

6. As a matter of fact, the learned Single Judge had

been very considerate and sympathetic to the workman that even while setting aside the order of the Labour Court, the learned Single ordered that the company shall not take any action against the workman for the dues which were already paid to him.

7. We do not find any legal infirmity in the order dated 17th February 1997 passed by the learned Single Judge warranting interference in the appeal.

8. The appeal is dismissed.

9. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)